IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5568 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BS MAKWANA C/O CP FERNANDEZ

Appearance:

MR HARDIK C RAWAL for Petitioner

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 25/07/2000

ORAL JUDGEMENT

Heard learned counsel Mr. H.C. Rawal appearing for the petitioner GSRTC and Mr. GK Rathod, learned counsel appearing for the respondent.

2. The respondent was working as a driver under GSRTC. While in service respondent Shri. B.S. Makwana remained absent from duty from 1st June 1995 to 13th July 1995, causing disruption of service of the Corporation. Because of the unauthorised absence of the respondent, Corporation had to engage another driver by giving over time allowance. For this unauthorised absence disciplinary proceeding was initiated against the respondent and in the disciplinary proceeding the charges framed against the respondent were proved. The disciplinary authority after hearing the respondent, and after considering the Inquiry Report, dismissed the respondent from service by an order dated 5-2-1996. Feeling aggrieved, respondent moved the Government, who referred the dispute to the Labour Court at Junagadh, which registered his case as Reference (LCJ) No: 123 of 1996. The Labour Court after taking evidence of the parties and after hearing both the parties, set aside the order of dismissal and directed the Corporation to reinstate the respondent in service, by allowing 50 % of the back wages. Having felt aggrieved by the order of Labour Court, Junagadh dated 20-12-1999, Corporation has filed present petition for quashing the judgment & award of the Labour Court.

3. Mr. Rawal, learned counsel appearing on behalf of the petitioner Corporation submitted that the respondent without any intimation left his place of service and remained absent from 1-6-1995 to 13-7-1995. He did not intimate the office or obtained any permission from the authority for such absence from duty. Mr. Rawal submitted that this unauthorised absence has caused disruption of service of the Corporation and the Corporation had to engage another driver paying over time allowance for performing duty of the respondent. Mr. Rawal further submitted that if the unauthorised absence from duty is not seriously viewed, then, it would be difficult for the Corporation to maintain discipline in the office. Accordingly Mr. Rawal submitted that the Labour Court should not have interfered with the penalty of dismissal of the respondent. It is also submitted by Mr. Rawal that the Labour Court has not found any irregularity in the proceedings, but taking a liberal view Labour Court has reinstated the respondent with 50 % back wages. Learned counsel accordingly submitted that, when the charges are proved and no defect is found in the proceedings, the Labour Court should not have interfered with the penalty imposed by the authority. It is accordingly submitted that, since no error is found in the proceedings, interference with the penalty imposed by the Labour Court should be quashed.

4. Mr. G.K. Rathod, learned counsel appearing on behalf of the petitioner submitted that the unauthorised absence of the respondent is unintentional and under compelling circumstances he remained absent from duty. Learned counsel further submitted that, since this is his first unauthorised absence, the penalty of dismissal from service is disproportionate to the alleged misconduct committed by the respondent. Learned counsel accordingly submitted that the Labour Court examined the papers and documents, and after taking evidence Labour Court was satisfied that the penalty imposed was disproportionate to the offence alleged to have been committed and therefore no interference is required on the judgment & award passed by the Labour Court. The Labour Court has taken a lenient view in the matter and has passed an order for reinstatement since this is the first offence alleged to have been committed by the respondent. I am also of the view that the Labour Court has rightly directed reinstatement of the respondent. However, when the charges of misconduct have been proved, I am of the view, withholding of 50 % of the back wages may not be a sufficient penalty for the misconduct committed by the respondent. In the facts & circumstances of the case, I am of the view that withholding of one increment with cumulative effect with payment of 25 % back wags will meet the ends of justice. Accordingly one increment of the respondent shall be withheld with cumulative effect, and he shall be paid 25 % of his back wages from the date of his dismissal till the date of reinstatement with continuity in service. Petitioner Corporation is directed to reinstate the respondent immediately. This petition is allowed in part with the aforesaid modifications in the award of the Labour Court. Rule made absolute to the aforesaid extent. I make no order as to costs.

Dt: 25-7-2000 (P.K. Sarkar, J)

/vgn.